

(23.851)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 700.

WELLS, FARGO & COMPANY, EXPRESS, AND THE UNITED
STATES FIDELITY AND GUARANTY COMPANY, PLAIN-
TIFFS IN ERROR,

vs.

D. W. FORD.

IN ERROR TO THE COUNTY COURT OF MADISON COUNTY,
STATE OF TEXAS.

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1

"Caption."

In the County Court of Madison County, Texas, at Madisonville.

No. 284.

D. W. FORD

VERSUS

WELLS FARGO & COMPANY, EXPRESS, et al.

Be it remembered, that at a regular term of the Honorable County Court of Madison County, Texas, begun and holden before W. W. Sharp, the presiding Judge of said court at Madisonville on the 7th day of April, A. D. 1913, and ending on the 28 day of April, 1913, the following proceedings were had and the following papers were filed on dates respectively indicated in the cause styled and numbered in said county court as follows;—

2

Account of Plaintiff Filed in Justice Court.

MADISONVILLE, TEXAS, Oct. 10th, 1912.

Wells Fargo & Company, Express, In Account with D. W. Ford, Dr.
\$35.00.

3

"Citation."

THE STATE OF TEXAS:

To the Sheriff or any constable of Madison County, Greeting:

You are hereby commanded that you summon Wells Fargo and Company Express, whose local agent is E. H. Smith of Madisonville, Texas said company is a corporation duly authorized to do business under the laws of the state of Texas to appear before me at a regular term of the Justice's court for Precinct No. one in said county of Madison to be held at my office in the town of Madisonville in the county of Madison on the 26th day of Oct. A. D. 1912, to answer the suit of D. W. Ford — is plaintiff against Wells Fargo and Company, Express a corporation whose local agent is E. H. Smith defendant being numbered No. 29 on the docket of said court, the plaintiff's demand being for the sum of thirty five (\$35.00) dollars due upon a certain claim for \$35.00 by reason of said company the defendant failing to collect said amount upon the delivery of certain goods entrusted to said defendant to be delivered to Walker Edmund Co. of Chicago, Ill. that said goods were shipped C. O. D. upon the payment of said \$35.00 and said goods were delivered without collecting said \$35.00 and if so collected said defendant refuses to pay said amount to said plaintiffs damage of \$35.00. Wherefore plaintiff prays judgment for said \$35.00 and six per cent interest on said \$35.00 from Oct. 9th, 1912, and for costs of suit. Herein fail not

and of this writ make due return to the next regular term of the Justice's court for Precinct No. One in said county of Madison to be held on the 26th day of Oct. A. D. 1912, next.

Given under my hand this 10th day of Oct. A. D. 1912.

W. W. STEELE,
Justice of the Peace, Precinct No. One,
Madison County, Texas.

"Officer's Return."

Came to hand on the 10 day of Oct. 1912, at 10 O'Clock A. M. and executed within said county of Madison on the 10 day of Oct. 1912, at 10 O'Clock A. M. by delivering the within named E. H. Smith at Madisonville in person, a true copy of this citation.

4

J. A. WILSON,
Dept. Sheriff, Precinct No. 1,
Madison County, Texas.

Fees.

Serving Copy.....	\$.70
Mileage miles.....	...
Total	\$.70

Filed —.

5

"Bond for Costs."

Suit Pending in the Justice Court of Madison County.

No. 29.

D. W. FORD

vs.

WELLS FARGO & COMPANY, EXPRESS.

Know all men by these presents that we D. W. Ford as principal and C. J. Davis as sureties, do hereby acknowledge ourselves jointly and severally bound to pay to the officers of said court all costs that may be adjudged against the plaintiff in the above entitled suit during the pendency or at the determination thereof, and judgment for the said costs may be rendered against us.

Witness our hands this — day of — A. D. 191—.

D. W. FORD.
C. J. DAVIS.
B. L. LEONARD.

Approved this 2nd day of Dec. A. D. 1912.

W. W. STEELE,
Justice of the Peace, Precinct No. 1,
Madison County, Texas.

6

Def't's Ans.

In the Justice Court Madison County, Precinct No. 1.

D. W. FORD

VS.

WELLS FARGO & Co.

29.

Comes now the defendant in the above styled and numbered cause and demurring and excepting to plaintiff's petition says the same is wholly insufficient in law and presents no cause of action against it and of this it prays the judgment of the court.

BAKER, BOTTS, PARKER & GARWOOD,
Attorneys for Defendant.

Answering said petition, if such be necessary, this defendant denies all and singular the allegations therein contained and demands strict proof of same.

2.

Further answering said petition this defendant would show to the court that the goods herein sued upon while in this defendant's hands were taken from it by means of legal process, to-wit:—replevin and the plaintiff herein was duly notified of such fact but refused to take any notice and did not offer any defense to the said action at Chicago, Illinois, although he was duly notified by this defendant. This defendant would now show the court that it is not and was not liable to plaintiff for the said goods since they were seized and taken under judicial process. Wherefore this defendant prays the court that plaintiff take nothing by this suit and that it be discharged and go hence and recover its costs and such other relief, etc.

BAKER, BOTTS, PARKER & GARWOOD,
Attorneys for Defendant.

7

"Transcript on Appeal to County Court."

Transcript on Appeal (Civil).

In the Justice Court, Precinct No. One, Madison Co., Texas.

D. W. FORD, Plaintiff,

VS.

WELLS FARGO & Co. EXPRESS, Defendant.

No. 29.

T. J. Ford, Plaintiff's Attorney.

Justice's fees:

Total	\$4.05
Constable's Fees	\$.70
Miscellaneous Fees	\$4.75

Suit upon — for \$35.00 of date —, due —, interest —%, Attorney's Fees, —, Filed —, Citation issued the — day of — 19—. Returnable to — term, 19—, and placed in the hands of — mailed to — returned — day of — 19— executed — day, 19—.

"Final Judgment."

This 27 day of Jan. A. D. 1913.

This day came the parties by their attorneys and submit the matters in controversy as well of fact as of law to the court: and the evidence and argument of counsel having been heard and understood it is *condensed* by the court that the plaintiff D. W. Ford do have and recover of the said defendant Wells Fargo & Co., express the sum of thirty five dollars with interest thereon at the rate of six per cent per annum together with his costs in this behalf expended and that he have his execution.

W. W. STEELE,

J. P., Prec. One, Madison County, Texas.

THE STATE OF TEXAS,

County of Madison:

I, W. W. Steele Justice of the Peace in and for Precinct No. One in said county and state do hereby certify that the above and foregoing is a true and correct copy of all the entries on my docket in the cause No. 29 wherein D. W. Ford plaintiff vs. Wells Fargo and Express Co. defendant together with a true and correct copy of the bill of costs in said case, as same appears on said docket. Given under my hand officially the 8 day of March A. D. 1913.

W. W. STEELE,

Justice of the Peace, Precinct No.

One, Madison County, Texas.

8

"Appeal Bond."

In Justice's Court of Madison County, Texas, Precinct No. 1.

29.

D. W. FORD

VS.

WELLS FARGO & COMPANY.

Whereas, on the 27th day of January, 1913, before W. W. Steele, a Justice of the Peace in and for Precinct No. 1, Madison County, Texas, D. W. Ford, recovered against Wells & Company a judgment for the sum of thirty-five and no/100 dollars, (\$35.00) dollars and the costs of court, from which judgment the said Wells Fargo & Company has appealed to the County Court of Madison County;

Now therefore, We, Wells Fargo & Company as principal and United States Fidelity & Guaranty Company as sureties, acknowledge ourselves bound to pay the said D. W. Ford the sum of one hundred (\$100.00) dollars conditioned that Wells Fargo & Company, the Appellant, shall prosecute its appeal to effect, and shall pay off and satisfy the judgment which may be rendered against it on such appeal.

Witness our hands this 30 day of January, 1913.

WELLS FARGO & COMPANY,
By BAKER, BOTTS, PARKER &
GARWOOD,

Its Attorneys of Record.

UNITED STATES FIDELITY &
GUARANTY COMPANY,

By JOHN F. SCOTT,

Its Attorney in Fact. [L. s.]

Filed and approved 2nd day of Feb. 1913.

W. W. STEELE,
*Justice of the Precinct One,
Madison County, Texas.*

9

Answer of Defendant.

In the County Court of Madison County.

D. W. FORD

vs.

WELLS FARGO & COMPANY EXPRESS.

Comes now the defendant in the above styled and numbered cause and leave of the court first being had and obtained files herein its first amended original answer and says:

Def't's Amended Ans.

1.

Defendant demurs generally to plaintiff's petition filed herein and says that the same is wholly insufficient in law and presents no cause of action against it, and of this it prays the judgment of the court.

2.

The defendant denies all and singular the allegations in plaintiff's petition contained, and demands strict proof of the same.

3.

If further answer herein be necessary this defendant says that it duly transported the shipment referred to in plaintiff's petition from

Madisonville, Texas where it was delivered to the defendant, to Chicago, Illinois, the destination thereof, and there tendered same to the Walker Edmund Company, the consignee thereof, for delivery. Upon payment by the consignee of the sum of thirty five dollars (\$35.00) and the express charges thereon, being the sums upon payment of which this defendant was authorized and required by its contract with the plaintiff herein, to make such delivery; but defendant says that the said consignee refused to make the payments aforesaid or any of them, or to receive said shipment, but forthwith caused to be issued out of the Municipal court of the first district in the state of Illinois, County of Cook, City of Chicago, and in a suit therein pending numbered 287,084, and entitled the "Walker Edmund Company vs. D. W. Ford and Wells Fargo & Company, Express, a certain writ of replevin, which said writ was thereupon the 21st day of September, A. D. 1912, executed by the bailiff of the

10 said Municipal Court by seizing the shipment hereinbefore referred to and for the value of which, plaintiff herein sues: that upon the service of the process aforesaid, this defendant gave due notice thereof, and of said suit to the plaintiff herein and tendered the plaintiff herein the defence thereof, and that thereafter in said cause a judgment was duly rendered that the plaintiff in said suit, the Walker Edmund Company, a corporation, was, as against D. W. Ford and this defendant Wells Fargo & Company, Express, entitled to the title and possession of the property.

The defendant says that by virtue of the proceedings and judgment aforesaid, this defendant is entitled to be discharged therefrom and it prays that this court giving full faith and credit to the proceedings and judgment of said court of said state of Illinois will so decree.

BAKER, BOTTS, PARKER & GARWOOD,
Attorneys for Defendant.

Filed March 31st, 1913. T. E. Griffin, Clerk County Court, Madison County, Texas.

11 *"Plaintiff's Replication to Defendant's Answer."*

In the County Court of Madison County, Texas, Apr. Term, 1913.

D. W. FORD

vs.

WELLS FARGO & EXPRESS COMPANY.

Now comes the plaintiff herein and moves the court to strike out that portion of defendant's answer filed herein, *said answer filed* on the 31st day of March, 1913, and that particular portion of same, to-wit; Section 3 in said answer, not plead in his original answer filed in the Justice Court, nor noted on the Justice Docket as shown by transcript filed herein.

Wherefore he prays judgment of the court.

W. J. POOLE AND
T. J. FORD,
Att'ys for Plaintiff.

In the County Court of Madison County, Texas, Apr. Term, 1913.

D. W. FORD

vs.

WELLS FARGO CO. & EXPRESS.

Now comes the plaintiff leave of the court first being had, and in reply to the answer of the defendant filed in this court on the 31st day of March, 1913 and says:—

1.

Plaintiff demurs to defendant's answer and says that the matters and things set up therein are wholly insufficient in law and of this he prays judgment of the court;—

2.

Plaintiff says that it is not true as alleged in defendant's answer that he was ever cited in cause No. 287,084, of the Municipal Court of the First District, in the City of Chicago, County of Cook, State of Illinois; and plaintiff says that he never appeared in said cause or any other cause either in person or by attorney, in fact he never knew anything of said suit and plaintiff says that it is not true as alleged in said answer, that in said suit a judgment was rendered in favor of said Walker Edmund Co., a corporation; and they were not entitled to the title and possession of said property in question in said cause; because the court had no jurisdiction of the person of this plaintiff; no citation ever was served on him and he did not appear either in person or by attorney in said cause.

3.

Plaintiff says that if there was any suit as alleged by defendant which is specially denied it was only a friendly suit between the Walker Edmund Company, a corporation and the Wells Fargo Company and Express, to defraud this plaintiff out of his said money, and plaintiff says that thereto was collusion between the said Walker Edmund Co. and said Express Company, to defraud this plaintiff out of his said money. Plaintiff says that he is advised believes and so charges the facts to be that the defendant Wells Fargo Express Company failed to make any defense to said suit as mentioned by their answer and the defendant failed and refused to make this plaintiff a party to said suit.

W. J. POOLE &

T. J. FORD,

Attorneys for Plaintiff.

In the County Court of Madison County, Texas, Apr. Term, 1913.

13 "*Findings of Facts and Conclusions of Law.*"

D. W. FORD

VS.

WELLS FARGO & EXPRESS COMPANY.

Be it remembered, that upon the trial of the above styled and numbered cause, the matters of fact as well as of law, *was* submitted to the court; and upon a hearing of same the court made the following findings:

He finds the following to be the facts in said cause:

1.

That said defendant was negligent, in this; that it failed to give plaintiff legal notice, of the pendency of the suit, filed against plaintiff *and* defendant, in said cause instituted in the City of Chicago, Ill.

2.

That no proof was made by defendant as to the law regarding the manner of service in the State of Ill. and City of Chicago on the person of *defendants* before judgment could be had against a resident citizen of the State of Texas.

3.

That no service was had over the person of plaintiff, in suit offered in evidence, had in the Municipal court of the city of Chicago.

4.

That plaintiff was not served in any way provided by law and did not appear in person or by attorney nor waived the issuance and service of citation and at the time, at which said judgment was rendered which was offered in evidence herein.

5.

That the defendant herein, on account of its negligence in failing to give the plaintiff legal notice herein of the pendency of said suit in the City of Chicago is liable on account of said negligence.

14 The Court finds the following law in said cause:

1.

That in the absence of any proof on part of the defendant, that the law regarding the service of defendants, before judgment can be rendered by default, the same law in Illinois, as in Texas.

2.

The court finds that the judgment offered in evidence herein by defendant is void as to this plaintiff.

3.

That the court further finds, that before the defendant can avail itself of the defense; that the property was taken by civil authority from the possession of defendant; that it is required to have legal notice issued out of the court, where replevin is sought, to have D. W. Ford plaintiff herein, making said Ford a party thereto, according to the law of the State of Illinois.

This 26th day of April, 1913.

W. W. SHARP,
County Judge, Madison County, Texas.

15 *"Judgment of Court Showing Exception and Notice of
 Appeal."*

April 25th, A. D. 1913.

No. 284.

D. W. FORD

VS.

WELLS FARGO & CO. EXPRESS.

Judgment.

This day came the parties by their attorneys and submit the matter in controversy as well of facts as of law to the court and the evidence and the argument of counsel having been heard and fully understood it is considered by the court that the plaintiff D. W. Ford do have and recover of the defendant the Wells Fargo & Company, Express, the sum of thirty five (\$35.00) dollars with interest thereon at the rate of six per cent per annum from the 27th day of January 1913, together with his cost in this behalf expended and all cost of the Justice court from which this case was appealed and that he have his execution.

To which defendant then and there excepts to the judgment herein rendered and in open court gives notice of appeal from this court to Supreme Court of the United States.

W. W. SHARP, *Co. Judge.*

In the County Court of Madison County.

No. 284.

D. W. FORD

VS.

WELLS FARGO & CO. EXPRESS.

Statement of Facts.

Be it remembered that on the 25th day of April, A. D. 1913, the above numbered and styled cause came on for trial in the county court of Madison County, Texas, at its April Term, 1913, before Hon. W. W. Sharp, Judge thereof, when and where the following facts and none other were adduced in evidence.

"Testimony on the Part of Plaintiff."

D. W. FORD, called as a witness in his own behalf, first duly sworn testified as follows:

I am the plaintiff in this suit against Wells Fargo & Company, Express. I shipped the goods involved in this suit, being a diamond ring, on September 16, A. D. 1912, consigned to the Walker Edmound Company, Chicago, Illinois, with C. O. D. charges thereon amounting to thirty five (\$35.00) dollars. I shipped the goods from Madisonville, Texas by Wells Fargo & Company Express. I have never received the thirty five (\$35.00) dollars, although I have often made demand for same from Wells Fargo & Company. I was never served with any papers in any suit involving this shipment pending in Chicago, Illinois, or elsewhere. I was never served personally with any citation in any suit in Chicago. From the latter part of September until November I was not in Madisonville, Texas, but was in the southern and southwestern part of the State and did not return to Madisonville until November, 1912.

Cross-examination:

My home is in Madisonville, Texas, I have lived here several years. I consider it as my home and vote at Madisonville. I received the original of the letter, copy of which you hand me, upon my return to Madisonville in November, 1912. I might have received another letter but I don't think I did, but if so I do not know where it is at this time. If I did receive this letter, it was some time in November after my return from South Texas.

Redirect examination:

During the time I was away from Madisonville I did not receive any letter or any notice of the pendency of a suit in Chicago Illinois in which the shipment in this case was involved.

Plaintiff introduced and read in evidence a bill of lading of the

Wells Fargo & Company Express issued by E. H. Smith, Agent of said Company at Madisonville, Texas, showing the shipment of the ring by the plaintiff on 9/16/12 and consigned to the Walker Edmund Company Chicago, Illinois.

Here the plaintiff rested his case.

Testimony on the Part of the Defendant.

E. H. SMITH called as a witness by defendant, first duly sworn testified as follows:

I am the agent for Wells Fargo & Company, Express, at Madisonville, Texas, and was during the months of September, October and November, 1912. I was agent at the time Mr. Ford, the plaintiff shipped the goods involved in this suit. I know the plaintiff and remember the time the goods were shipped. During the latter part of September, 1912, I was notified of the pendency of a suit in Chicago, Illinois, in which the title to these goods, that is, to the diamond ring referred to by plaintiff, and in which suit Wells Fargo & Company, and the plaintiff here, Mr. Ford, were defendants, on October 2, 1912. I wrote to Mr. D. W. Ford at Madisonville, Texas. This letter which you hand me (being the copy of letter referred to by plaintiff, above) is a copy of same. I wrote that letter, placed it in an envelope, addressed it to "Mr. D. W. Ford, Madisonville, Texas," duly stamped it and placed it in the postoffice. I did not know that Mr. Ford was a traveling man. I knew that he claimed Madisonville as his home. I did not send him notice of the pendency of the suit at any other place than Madisonville, Texas. As well as I remember, I mailed Mr. Ford another letter which was sent from Mr. Earl, an agent of Wells, Fargo & Company, at Chicago. This letter was also addressed to him at Madisonville, duly stamped and placed in the office at that point. It was of similar import with my letter.

Cross-examination:

18 I did not know that Mr. Ford was a traveling man or was away from Madisonville during the latter part of September and October, 1912. I did not try to ascertain whether Mr. Ford was in the city at the time I mailed him the letter. I knew that he oftentimes shipped fruit trees and nursery produce through the express office, but I did not know that he traveled through the state delivering same.

THOMAS P. EARL testified by deposition taken on the 5th day of April, 1913, as follows:

My name is Thomas P. Earl, I reside at 818 Main Street, Evanston, Illinois, and am general agent of the Wells Fargo & Company Express at Chicago, Illinois. I have been filling this position since January 1, 1912, and was occupying that position during the months of September and October, 1912. The shipment of goods, shipped by D. W. Ford by way of Wells Fargo & Company, Express, from Madisonville, Texas, on or about the 16th day of October, A. D.

1912, consigned to the Walker Edmund Company of Chicago, Illinois, was not handled by me personally. It was received at our Polk Street depot on the morning of September 20, 1912, and sent out for delivery by wagon conductor, George Vacher, who reported consignee refused to receive it on account of the C. O. D. It was then taken to our on hand department, located at 30 North Dearborn Street, Chicago, Illinois, and turned over to C. F. Wilmington, the clerk in charge, for safe keeping until such time as it could be disposed of.

(Plaintiff objects to the witness testifying as to the arrival of the shipment in Chicago, the tendering of delivery of same to the consignee and disposition of same, because such testimony is hearsay, the witness not showing that the facts testified were in his knowledge.)

I did not give the consignee any further notice of the arrival of the shipment in Chicago, than the personal notice at the time shipment was offered for delivery to consignee in Chicago.

(Plaintiff objects to the witness testifying that he gave the consignee personal notice of the arrival of the shipment in Chicago, Illinois, because the witness had previously testified that he did not give such personal notice.)

The consignee did not accept the shipment from Wells Fargo & Company, Express, but later got possession of it by replevin suit in the Municipal Court of Chicago. No process or paper concerning said shipment was ever served on me.

19 (The plaintiff objects to the witness testifying that the consignee did not accept the shipment from Wells Fargo & Company, Express, but got possession of it by replevin suit in the Municipal Court of Chicago, because such testimony is hearsay, as the witness does not show that he was present when possession was obtained and that he knows same of his own knowledge.)

A process was however, served on Mr. H. J. Leffingwell, agent of Wells Fargo & Company, Express, at 30 North Dearborn Street, Chicago, Illinois, who delivered same to me.

(Plaintiff objects to the testimony of the witness as to the service of process on H. J. Leffingwell, because it is hearsay and secondary evidence.

The property involved in this shipment was seized by Thomas M. Hunter, Bailiff, by his deputy, William B. Scott.

(The plaintiff objects to the testimony of the witness as to the person seizing property because such testimony is hearsay and secondary evidence.)

I have attached a certified copy of the writ of replevin under which the goods were seized.

(Plaintiff objects to the foregoing testimony because the same is hearsay and the witness does not show that he saw the writ of re-

plevin served and knows of his own knowledge that the same was ever served.)

At the time the writ was served I addressed a letter to Agent Wells Fargo & Company, Express, at Madisonville, Texas, under date of September 21, 1912, advising him of the arrival of the shipment, stating that it was offered for delivery and refused by the consignee, the Walker Edmund Company, who had this day replevined it and filed suit against D. W. Ford and Wells Fargo & Company, Express, for full possession, requesting the agent to advise me promptly if Mr. Ford wishes us to employ Counsel at his expense to defend the case.

(The plaintiff objects to the foregoing testimony because the same is hearsay and the purported letter is the best evidence of its contents.)

I followed this with a telegram to the Agent at Madisonville, Texas, on September 28th, 1912, advising him the correct date of the hearing was October 4, 1912, instead of October 8, 1912, as he was previously notified and received a reply under date of September 29, 1912, stating that Mr. D. W. Ford advises he is not
20 interested in the replevin case of Walker Edmund & Company and does not wish us to employ counsel for him.

(Plaintiff objects to the foregoing testimony as hearsay and the telegram would be the best evidence of its contents.)

I did not attend the hearing of the cause in which the writ of replevin was issued and the trial for possession of the goods in this shipment but delegated H. J. Leffingwell, Agent, Wells Fargo & Company, Express, Chicago, to represent me at the trial of the case. I have attached certified copies of the proceedings in the said case.

Cross-examination:

I notified the shipper of the services of process in Chicago by sending a letter under date of September 21, 1912, to Agent, Wells Fargo & Company, Express, at Madisonville, Texas, informing him of the circumstances. At the time I am answering the direct interrogatories there are present H. J. Leffingwell, Charles E. Holmes, Notary Public, and Mildred Bloom, stenographer. No one has made any suggestion as to what my answers should be to the direct interrogatories. In answering the direct interrogatories I have used to assist my memory copies of letters and telegrams between myself and the agent at Madisonville, Texas, and a memorandum of the delivery of the shipment which is hereto attached.

Defendant read in evidence copies of memoranda referred to in and attached to the deposition of the witness T. P. Earl, as follows:

Memorandum.

CHICAGO, ILL., April 5th, 1913.

Package C. O. D. \$35.00, consigned Walker Edmund Company, shipped by D. W. Ford, Madisonville, Texas, Sept. 16th, 1912.

Shipment offered for delivery by Wagon Conductor G. Vacher on Sept. 20th, 1912, refused by consignee and delivered to On Hand Department in charge of C. F. Wilmington, Money Clerk, at #30 Dearborn Street.

(Plaintiff objects to the introduction of the above memorandum, because same is hearsay, and it is not shown that it was made by any person having authority to make it or that it was made at any time contemporaneous with the alleged act.)

Copy of Telegram.

MADISONVILLE, TEX., Sept. 29.

21 T. P. Earl, Care Wells Fargo & Co., Chicago, Ill.:

Your wire 28th Mr. D. W. Ford advises he is not interested in replevin case Walker Edmund Co. and do not employ any counsel for him he holds us responsible for C. O. D. value of shipment thirty five dollars.

E. H. SMITH.

(Plaintiff objects to the introduction to the above copy of telegram because the testimony of plaintiff D. W. Ford and of the witness E. H. Smith, shows that the plaintiff did not so advise E. H. Smith and the telegram being between two employees of the defendant, it is not binding on the plaintiff.)

Copy of Telegram.

CHICAGO, ILL., Sept. 28th, 1912.

Agent, Wells Fargo & Co. Express, Madisonville, Texas:

My letter of September twenty first replevin case Walker Edmund Company set for October fourth instead of eight. Please advise what action shall be taken.

T. P. EARL.

(Plaintiff objects to the introduction of the above copy of telegram, because it was between employees of the defendant and the plaintiff D. W. Ford, knew nothing about it and same is not binding on him.)

Copy of Letter.

U. S. Mail.

CHICAGO, ILL., Sept. 21st, 1912.

Agent, Madisonville, Texas:

Your waybill # 6, September 16th, 1912, package C. O. D. \$35.00, consigned to the Walker Edmund Co. from D. W. Ford.

The shipment was offered for delivery on arrival and refused. To-day it was replevined by the Walker Edmund Company and

suit filed against D. W. Ford and this company, returnable October 8th, for full possession.

Will you please advise me promptly if Mr. Ford wishes to employ counsel at his expense to defend the case.

(Signed)

T. P. EARL, *General Agent.*

22 (Plaintiff objects to the introduction of the foregoing copy of letter because it is hearsay and if any replevin suit was filed the records are the best evidence, and further it is a communication between two employees of the defendant and the plaintiff had no notice of it and it is not binding on him.)

H. J. LEFFINGWELL testified by deposition taken on the 5th day of April, 1913, as follows:

My name is H. J. Leffingwell. I reside at Lombard, Illinois, and am agent of Wells Fargo & Company, Express, at Chicago, Illinois. I have been engaged in my present position since January 24th, 1910 and occupied the same position during September and October 1912. The shipment of goods of the alleged value of thirty five dollars (\$35.00) shipped by way of Wells Fargo & Company Express from Madisonville, Texas, on or about the 16th day of September, A. D. 1912, consigned to the Walker Edmund Company, Chicago, Illinois, was not handled by me until September 21st, 1912, on which date I surrendered same to a deputy bailiff of the Municipal Court of Chicago, who demanded same on a writ of replevin No. 287,084. The shipment was received in Chicago on September 20, 1912. No notice of the arrival of the shipment was given to the consignee other than such notice as was given at time shipment was offered for delivery. I do not know of my own knowledge whether or not consignee ever received said shipment.

(Plaintiff objects to the witness testifying as to the notice given the consignee at the time the goods were offered for delivery, because such testimony is hearsay.)

A process or paper concerning said shipment was served on me,—it was a writ of replevin in case No. 287,084. The writ of replevin was served on me on September 21, 1912, by William B. Scott, deputy ba-liff of the Municipal court of Chicago. The property involved in the shipment was seized by William B. Scott, deputy bailiff of the municipal Court of Chicago, acting for Thomas M. Hunter, bailiff of said court. A certified copy of the process is attached to the deposition of T. P. Earl. At the time said process was served on me I did not notify the shipper of the serving of same but I delivered to Thomas P. Earl, General Agent of Wells Fargo & Company, Express at Chicago, Illinois, the copy of the writ of replevin served on me and advised said Thomas P.

23 Earl that the goods had been seized by an officer of the Municipal court. I gave him this information so that he might properly notify the agent at shipping point. I attended the hearing of the cause to which the process or paper served on me related. I

do not know whether or not D. W. Ford was present at the hearing, but neither D. W. Ford or his representative answered when the case was called by the clerk of the Municipal Court. Certified copies of the proceedings in said cause are attached to the answers to the interrogatories propounded to Thomas P. Earl, General Agent, Wells Fargo & Company, Express, Chicago, Illinois.

"Cross-examination:"

I have answered that I was served with some process or paper but I did not notify the shipper personally, but reported the case to my superior officer, Thomas P. Earl, General Agent, Wells Fargo & Company, Express, Chicago, Illinois. I did not state that Mr. D. W. Ford was not present at the hearing of the cause in Chicago, but I did state that neither D. W. Ford nor his representative responded to the call of the clerk of the Municipal Court. At the time I am answering the direct interrogatories, there are present, Notary Public, Charles E. Holmes, Stenographer Mildred Bloom and Thomas P. Earl, General Agent of Wells Fargo & Company, Express, Chicago, was present a small portion of the time. No one has offered any suggestions in regard to my replies to the direct interrogatories. All data which I have used to refresh my memory in answering the direct interrogatories is contained in the documents attached to the interrogatories propounded to Thomas P. Earl.

Defendant introduced and read in evidence the copy of the letter hereinbefore referred to in the testimony of the plaintiff and the witness E. H. Smith, said letter being as follows:—

Form 817, W. F. & Co. Express.

U. S. Mail.

MADISONVILLE, TEX., 10-2-1912.

Mr. D. W. Ford, Madisonville, Tex.

DEAR SIR: Relative to sealed package containing jewelry consigned to the Walker Edmund Co., Chicago, Ill., this is to
24 advise you that the package was replevined by Walker Edmund Co. and suit filed for possession of goods. Case to be tried October 4th, 1912, at Chicago, Ill. and unless you appear to defend title in goods judgment will be given by default; the Wells Fargo Express Co., not interested. This for your information and confirming conversation with your attorney with me on September 29th, 1912.

Yours truly,

E. H. SMITH, *Local Ag't.*

Mailed 2, P. M. 10-2-12.

Defendant introduced and read in evidence certified copies of proceedings had and papers filed in the Municipal Court of The First District of the City of Chicago, County of Cook, State of Illinois, which are referred to in and attached to the depositions of the witness, T. P. Earl and H. J. Leffingwell, as follows:

STATE OF ILLINOIS,

County of Cook, City of Chicago, — District:

SAMUEL D. FLOOD being duly sworn, doth depose and say that he is the duly authorized agent of the Walker Edmund Co., a corporation, that said, The Walker Edmund Co. a corporation, is now the owner of and is now lawfully entitled to the possession of the following goods and chattels, viz: One carved bear claw mounting, solitaire diamond ring, No. 25943, and that said goods and chattels are of the value of one hundred and twenty five dollars. That on the twentieth day of September, A. D. 1912, D. W. Ford and the Wells Fargo & Company, Express now wrongfully detains the said goods and chattels from the said The Walker Edmund Co. a corporation, and the said goods and chattels have not been taken for any tax, assessment or fine, levied by virtue of any law of this state against the property of said The Walker Edmund Co., a corporation, or against him individually: nor seized under any execution or attachment against the goods and chattels of the said the Walker Edmund Co., a corporation liable to execution or attachment; nor held by any virtue of any writ of replevin against the Walker Edmund Co., a corporation.

SAMUEL D. FLOOD.

Subscribed and sworn to before me this 21 day of September, A. D. 1912.

HOWARD FAY, *Clerk.*

25 (Endorsed:) No. 287084. The Municipal Court, First District. The Walker Edmund Co. vs. D. W. Ford, and the Wells Fargo & Co. Express. Affidavit for Replevin. Filed Sept. 21st, '12. The Municipal Court of Chicago. Howard Fay, Clerk.

STATE OF ILLINOIS,

City of Chicago:

I, Homer K. Calpin, Clerk of the Municipal court of Chicago, and the keeper of the records and files thereof in the state aforesaid do hereby certify the above and foregoing to be a true, perfect and complete copy of a certain affidavit for replevin with return endorsed thereon, the original of which is now on file in my office in a certain cause lately pending in said court on the law side thereof, between the Walker Edmund Co., a corporation, Plaintiff, and D. W. Ford and The Wells Fargo & Co., Express, defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Chicago, aforesaid, this 4th day of November, A. D. 1912.

[SEAL.]

HOMER K. CALPIN, *Clerk.*

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook,
City of Chicago, ss:

In the Municipal Court of Chicago.

Pleas, proceedings and judgments before the Municipal Court of Chicago, held in the city of Chicago, in the county of Cook and state of Illinois, at the places in the first District in said city provided by the corporate authorities of said city for the holding of said court, in the year of our Lord one thousand nine hundred and thirteen and the Independence of the United States the one hundred and thirty-seventh.

Present: Honorable Charles N. Goodnow, One of the Judges of the Municipal Court of Chicago, McClay Hoyne, State's Attorney, Anton J. Cermak, Bailiff. Attest, Frank P. Danish, Clerk.

Be it remembered, to-wit: that on the 24th day of October, A. D. 1912, the following among other proceedings were had in said court and entered of record therein to-wit:

THE WALKER EDMUND COMPANY, a Corporation,

vs.

D. W. FORD and the WELLS FARGO & COMPANY, EXPRESS.

Replevin.

This cause coming on for further proceedings herein, it is considered by the court that final judgment be entered on the default and assessment of damages herein and that the plaintiff have and retain possession of the property replevi-ed herein.

It is further considered by the court that the plaintiff have and recover of and from the defendants the damages of the plaintiff herein amounting to the sum of one cent (01) in form as aforesaid assessed, together with the costs by the plaintiff herein expended and that execution issue therefor.

The plaintiff having in open court acknowledged the payment in full to said plaintiff of the amount of the judgment in this cause it is ordered that said judgment be and it hereby is satisfied in full of record.

Be it remembered, that to-wit the 21st day of September, 26 A. D. 1912, a certain writ of Replevin was issued out of the office of the clerk of said Municipal court, under the seal thereof, directed to the Bailiff of said court to execute, which writ, together with the return of the Bailiff thereon endorsed, were and are in words and figures following, to-wit:

STATE OF ILLINOIS,
County of Cook,
City of Chicago,
First District, ss:

The People of the State of Illinois to the Bailiff of the Municipal Court of Chicago, Greeting:

Whereas, the Walker Edmund Co., a corporation by its duly authorized agent, Samuel D. Flood, Plaintiff, complains on oath that D. W. Ford, and the Wells Fargo & Co., Express, detains the following described goods and chattels to-wit: One carved bear claw mounting solitaire diamond ring, No. 25943, of the value of One hundred twenty-five dollars.

Therefore, we command you, That if the said Plaintiff shall give you bond with good and sufficient security in double the value of the said goods and chattels as required by law, to prosecute its suit in this behalf to effect and without delay and to make return of the said goods and chattels if return thereof shall be awarded and to save and keep you harmless in replevying the said goods and chattels, you cause the said goods and chattels to be replevied and delivered to the said plaintiff without delay; and also that you summon the said defendant to be and appear before the Municipal Court of Chicago at the City Hall in the city of Chicago, being one of the places in said city of Chicago, provided by the corporate authorities thereof for the holding of said court at 9:30 A. M. on the 4th day of Oct., A. D. 1912, to answer said plaintiff in the premises and have you then and there this writ with an endorsement thereon in what manner you shall have executed the same, together with the bond which you shall have taken from the said plaintiff as above commanded, before executing this writ.

Witness: Homer K. Calpin, Clerk of our said Court, and the seal thereof at Chicago, aforesaid, this 21st day of September, A. D. 1912.

[SEAL.]

HOMER K. CALPIN, *Clerk.*

(*Endorsed.*)

Received of Thomas M. Hunter, Bailiff, herein described property.

WALKER-EDMUND CO.,
By WEINBERG & GOLLMAN,
Per D. L. GOLDEN.

The plaintiff giving security as per bond hereto annexed, I have this 21st day of Sept., 1912, replevied all of the within described property in this city of Chicago, and have delivered the same to the Walker Edmund Co. by Wimberg & Grollman, att'ys & Agents as per receipt hereon endorsed this 21st day of —.

Served this writ on the within named Wells Fargo & Co., a corporation by delivering a copy thereof to H. J. Leffingwell, agent of said corporation and at the same time informing him of the contents thereof in the city of Chicago, this 21 day of Sept., 1912.

The President, Secretary, Superintendent, General Agent or other officer of said corporation not found in the city of Chicago. The other within named defendant not found in the city of Chicago.

THOMAS M. HUNTER, *Bailiff*,
By WILLIAM B. SCOTT, *Deputy*.

(Further endorsed:) No. 287084. The Municipal Court, First District. The Walker Edmund Co. vs. D. W. Ford and The Wells Fargo & Co. Express. Replevin Writ.

27 Be it remembered that to-wit, on the 2nd day of October, A. D. 1912, a certain bond was filed in the office of the Clerk of said Municipal Court, in words and figures following, to-wit:

Know all men by these presents:

That we The Walker Edmund Co., a corporation as principal and Samuel D. Flood as surety are held and firmly bound unto Thomas M. Hunter, Bailiff of the Municipal court of Chicago in the state of Illinois and to his successors in office, executors, administrators, and assigns in the penal sum of two hundred fifty (\$250.00) dollars, lawful money of the United States for the payment of which sum we do hereby jointly and severally bind ourselves our heirs executors and administrators.

The condition of this obligation is such, that whereas, on the twenty-first day of September, A. D. nineteen hundred and twelve the said The Walker Edmund Co. a corporation sued out of the Municipal Court of Chicago, aforesaid a writ of replevin against D. W. Ford, and The Wells Fargo & Co. Express, defendant for the recovery of the following goods and chattels property to-wit: One carved bear claw mounting solitaire diamond ring, No. 25943.

Now if the said The Walker Edmund Co. a corporation Plaintiff shall prosecute its suit to effect and without delay and make return of said property, if return thereof shall be awarded, and save and keep harmless the said Bailiff in replevying the said property and pay all costs and damages occasioned by wrongfully suing out said writ of replevin then this obligation to be void otherwise to remain in full force and effect.

Witness our hands and seals this 21st day of Sept., A. D. 1912.

[SEAL.]

THE WALKER EDMUND CO. [SEAL.]

S. D. FLOOD, *Treasurer*. [SEAL.]

SAMUEL D. FLOOD. [SEAL.]

(No endorsements.)

UNITED STATES OF AMERICA,

In the City of Chicago,

County of Cook, State of Illinois.

STATE OF ILLINOIS,

County of Cook,

City of Chicago, ss:

I, Harry Olcon, Chief Justice of the Municipal court of Chicago, do hereby certify that Frank P. Danish, whose name is subscribed to

the foregoing certificate of attestation, now is and was at the time of signing and sealing the same, the clerk of said The Municipal court of Chicago, and keeper of the seal and records thereof, duly elected, commissioner and qualified; that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record in the United States and elsewhere, and that the attestation is in due form of law and by the proper officer.

In witness whereof I have hereunto set my hand and affixed the seal of said court at the city of Chicago in said county, this 3rd day of April, A. D. 1913.

HARRY OLSEN, [SEAL.]

[SEAL.] *Chief Justice of the Municipal Court of Chicago.*

UNITED STATES OF AMERICA,
State of Illinois,
County of Cook,
City of Chicago, ss:

I, Frank P. Danish, Clerk of the Municipal court of Chicago do hereby certify that Hon. Harry Olsen whose name is subscribed to the foregoing certificate of attestation now is and was at the
28 time of the signing thereof, the chief Justice of the Municipal court of Chicago, duly elected, commissioned and qualified and that his said signature is genuine.

In witness whereof, I have signed my name and affixed the seal of said The Municipal Court of Chicago, this 3rd day of April, 1913.

[SEAL.]

FRANK P. DANISH,

Clerk of the Municipal Court of Chicago.

STATE OF ILLINOIS,
County of Cook, City of Chicago, ss:

I, Frank P. Danish clerk of the Municipal court of Chicago and the keeper of the records and files thereof in the state aforesaid do hereby certify the above and foregoing to be a true perfect and complete copy of a certain proceedings made and entered of record in said court also replevin writ together with the return thereon endorsed and bond, the writ together with the return thereon endorsed and bond, the originals of which are now on file in my office in a certain cause lately pending in said court on the law side thereof between The Walker Edmund Company a corporation, plaintiff and D. W. Ford, and The Wells Fargo Express Company, defendant.

In witness whereof, I have hereunto set my hand and affixed the seal of said court at Chicago, aforesaid, this 3rd day of April, 1913.

[SEAL.]

FRANK P. DANISH, *Clerk.*

(Plaintiff objects to the introduction of each and all the foregoing certified copies of the proceedings had in the Municipal Court of Chicago Illinois, because it was not shown that legal service in such proceedings was ever had on D. W. Ford.

Plaintiff specially objects to the introduction of the certified copy of the Judgment of the Municipal Court of Chicago, Illinois, be-

cause the same is not a final judgment and because it does not show that any judgment was ever entered against D. W. Ford or that there was any judgment entered disposing of the matter in controversy as required by the laws of the State of Texas, nor that D. W. Ford was ever served by citation in the case nor that he waived legal service or that he was present at the alleged trial or answered at such trial either in person or by attorney.

Plaintiff further specially objects to the introduction of such certified copy of the judgment because the certificate of the clerk of the Municipal Court of Chicago does not certify that it is a true copy of the judgment entered in such court.

Plaintiff further specially objects to the introduction of such judgment because the court entering same is not such a court as comes under the provision of the Constitution of the United States and of the Acts of Congress providing for the giving of full faith and credit to the proceedings of the court of one state in the courts of another state).

"Defendant rests its case."

(All the foregoing evidence was admitted by the courts subject to the objections interposed by plaintiff with the understanding that the court was to consider such evidence for what it might be worth and subject to the objections interposed by plaintiff.)

29 We the undersigned attorneys for the Plaintiff and defendant, respectively agree that the foregoing thirteen pages constitute a true and correct statement of all the facts adduced in evidence on the trial of the above entitled and numbered cause.

W. J. POOLE &

T. J. FORD,

Attorneys for Plaintiff.

BAKER, BOTTS, PARKER & GARWOOD,

Attorneys for Defendant.

The foregoing thirteen pages having been submitted to me and I having examined same and found same correct, I hereby approve the same as a full, true and correct statement of the facts adduced in evidence on the trial of the above cause and order same filed with the records of this case as the statement of facts herein.

W. W. SHARP,

Judge County Court, Madison County, Texas.

30 E 512—Bill of Costs—Civil, Printed Fees. D. C. & C. C.,
Art. 1401 & 22 & 3 R. S. 1895—Class 4. Texas Standard
Form.

Bill of Costs.

No. 284.

D. W. FORD, Pl'ff,

VS.

WELLS FARGO EX., Deft.

Mr. Wells Fargo & Company, Express, Dr., to officers of court.
The costs accrued in the above entitled cause to adjournment of
April 1913.

Clerk's Fees.

Dollars. Cents.

Docketing Cause			10
"	Motions		
Issuing	Writs Citation		
"	Writs Citation in Error		
"	Subpœnas for Witness		
"	Notices to Non-Resident		
"	Præcept. Interrogatories		
"	"		
"	Commissions to take Deposition		
"	Execution		
"	Order. of Sale		
"	Writ. of Attachment		
"	"	Possession	
"	"	Injunction	
"	"	Sequestration	
"	"	Garnishment	
"	"	Scire Facias	
"	"	"	
Entering	Appearance		05
"	Continuance		
"	Order		
"	Judgment		
"	"	Final	1.00
"	"	"	
Recording	Return. on Citation		
"	"	" Notice	
"	"	" Notice	
"	"	" Execution	
"	"	" Order. Sale	
"	"	" Verdict of Jury	
Filing Papers. 10 papers			50
Swearing 2 Witness			20
Swearing and Impaneling Jury			
Administering	Oath. without seal		
"	"	"	
"	"	"	
"	Certified cop. Petition		
"	"	"	
"	"	"	
"	"	"	
"	"	"	
Assessing Damages			
"	Words in excess in Orders		
"	"	Judgments	
Approving 1 Bond			1.00
Transcript 12180 Words @ 10 per hundred			12.18
Taxing Costs and Copy			25
Total Clerk's Fees			15.28
.....			
.....			
.....			
.....			
.....			

County Judge's Fee.....	..
Jury Fee deposited by.....	..
Printer's Fee due to.....	..
Stenographer's Fee.....	..
Attorney's Fee due to.....	..

Sheriff's Fees.

	Dollars.	Cents.
Executing... Citation... and... miles
“ .. Precept... and... “
“ .. Attachment... and... “
“ .. Sequestration
“ Garnishment
“ Possession
“ Injunction
“ Scire Facias.....
“ Restitution
Summoning... Witness... and... “
“ .. Jury
Levying
Posting
Appraising
Advertising
Taking Care of Property.....
Making Deed
Commission
Serving... Notices
Returning Writ of.....
.....
.....
.....
.....
Total Sheriff's.....
Witness Fees
.....
.....
Cost accrued in Justice Court.....	4.	75
.....
.....
.....
.....
.....
Total Witness Fees.....
Miscellaneous Costs
Total Miscellaneous

Recapitulation.

Clerk's.....brought forward.....	15.28
Sheriff's.... " "	
County Judge " "	
Jury..... " "	
Printers.... " "	
Stenographers " "	
Attorneys.... " "	
Witness..... " "	
Miscellaneous Justice- Court.....	4.75
Grand Total	\$20.03

By cash paid.....	
" " "	
" " "	
Balance Due	

[Endorsed:] File No. —. Bill of Costs. In — Court of — County, Texas. — Term, 190—. — vs. —, Is- sued —, 190—, —, Clerk, by —, Deputy. Re- ceived of — \$— in payment of Costs. —, 190—. —, by —. Article 1420 (A) reads: It shall be lawful for Clerks of the District and County Courts and Justices of the Peace to demand payment of all costs due in each and every case pending in their respective Courts up to the adjournment of each term of said courts. Article 1420 (B) provides ten days after such demand, the Clerk or Justice may place certified copies of bill of costs then due in the hands of the Sheriff or Constable for collection, which shall have force and effect of and execution. Taking an appeal does not interfere or suspend the right. Article 1420 (C) authorizes levy and sale, but no costs or charges allowed for making out certified bill of costs, or for collection, unless levy is made.

31 In the Supreme Court of the United States, October Term, A. D. 1913.

At Law.

D. W. FORD, Plaintiff,
versus

WELLS FARGO & COMPANY, EXPRESS, et al., Defendants.

"Original Petition for Writ of Error."

To the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, and the Associate Justices of said Court:

Now comes Wells Fargo & Company, Express, and United States Fidelity & Guaranty Company, corporations, defendants, in the

above entitled cause, and show unto this Honorable Court that in the record and proceedings and rendition of the judgment in the above cause by the county court of Madison County in the State of Texas, it being the highest court of said State in which a decision could be had in the said suit between D. W. Ford, Plaintiff therein and Wells Fargo & Company, Express, and the United States Fidelity & Guaranty Company, the defendants aforesaid manifest error has occurred, greatly to their damage, whereby petitioners have been aggrieved.

That in the record and proceedings it does appear that there was drawn in question the validity of a statute of the United States and the decision was against its validity, and there was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the right, title, privilege and exemption specially set up and claimed by defendant, Wells Fargo & Company, Express, under such clause, in that the defendant interposed as a defense in said suit a certain proceedings and judgment duly had and rendered in the Municipal Court of the City of Chicago, of the County of Cook, state of Illinois, which, if given full faith and credit by said County Court of Madison County, Texas, would have presented a complete defense in the cause aforesaid, the copies of said judgment and proceedings which were offered in evidence being duly authenticated in the manner and form prescribed by the acts of Congress and in that the defendant

32 claimed that under said valid statute and by virtue of Section 1 of Article IV of the Constitution of the United States, the judgment and proceedings aforesaid was entitled to be given full faith and credit by the county court of Madison County, Texas, but the decision of said court was against this defendant on each and both the issues aforesaid; all of which is fully apparent in the record and proceedings of the cause and is specially set forth in the assignment of errors filed herewith.

Wherefore, Petitioner prays that its appeal be allowed and that a transcript of the record of the proceedings and papers upon which said orders were made, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of said court in such case made and provided to the end that the same may be inspected and corrected as according to law and Justice should be done.

BAKER, BOTTS, PARKER & GARWOOD,
W. A. PARISH,

Attorneys for Petitioner.

Allowed this 21 day of May, A. D. 1912, the same to operate as a supersedeas.

W. W. SHARP,
Judge of the County Court of Madison County, Texas.

33

In the County Court of Madison County, Texas.

At Law.

D. W. FORD, Plaintiff,

VERSUS

WELLS FARGO & COMPANY, EXPRESS, et al., Defendant.

Assignments of Error.

Now come the Plaintiffs in Error, Wells, Fargo & Company, Express, and United States Fidelity & Guaranty Company, and in connection with their petition for writ of error in this cause assign the following errors which they aver occurred on the trial thereof and upon which they rely to reverse the judgment rendered herein, as appears of record:

I.

The County Court erred in rendering judgment for the plaintiff, D. W. Ford and against the defendant, Wells Fargo & Company, Express, the Plaintiff in error herein, because it appeared from the uncontroverted evidence that the property involved in the suit was taken from the possession of said Wells Fargo & Company, Express, by legal process of the State of Illinois, fair and valid on its face, of which due notice was given by said Wells Fargo & Company, Express, to said plaintiff.

II.

The County Court erred in holding insufficient the copy of the judgment and proceedings of the Municipal Court of the City of Chicago, County of Cook, State of Illinois, duly authenticated in compliance with the acts of Congress of the United States, because such holding was against the validity of an act of Congress of the United States, which is in truth in all things valid.

III.

The County Court erred in holding the judgment and proceedings aforesaid void as to plaintiff, D. W. Ford, because such holding denies full faith and credit to the public acts, records, and judicial proceedings of the State of Illinois.

34

IV.

The County Court erred in holding that in order to avail itself of the seizure of the property involved herein under legal process of the State of Illinois, it was necessary that the defendant, Wells Fargo & Company, Express, Plaintiff in Error herein, have legal notice issued out of the Court in which said proceedings were pending, making the other claimant to said property a party thereto.

BAKER, BOTTS, PARKER & GARWOOD,

Attorneys for Plaintiffs in Error.

[Endorsed:] No. 284. Wells Fargo & Company, Express, et al., Plaintiffs in Error, versus D. W. Ford, Plaintiff in Error. Assignments of Error. Filed May 21, 1913. T. E. Griffin, County Clerk, Madison Co., Texas.

35

"Writ of Error Bond."

Know all men by these presents, That we, Wells, Fargo & Company Express and United States Fidelity & Guaranty Company, as principals and Jas. A. Baker and G. A. Taft as sureties are held and firmly bound to D. W. Ford in the full and just sum of one thousand dollars (\$1000.00) to be paid to the said D. W. Ford his heirs or assigns, for which payment well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this the 21 day of May, A. D. 1913.

Whereas, lately at a term of the County Court of Madison County, Texas, in a suit pending in said court between D. W. Ford and Wells Fargo & Company, Express, a judgment was rendered in favor of D. W. Ford and against Wells Fargo & Company, Express, and against United States Fidelity & Guaranty Company, surety on the supersedeas bond of appeal of said Wells Fargo & Company, Express, and the said Wells Fargo & Company, Express and United States Fidelity & Guaranty Company, having obtained a writ of error and filed a copy thereof in the Clerk's office in the said court to reverse the judgment in the said suit and a citation directed to the said D. W. Ford citing and admonishing the said D. W. Ford to be and appear at a Supreme Court of the United States to be holden at Washington within thirty days from the date thereof.

Now the condition of the above obligation is such that if the said Wells Fargo & Company, Express, and United States Fidelity & Guaranty Company, shall prosecute their writ of error to effect and answer all damages and cost if they fail to make their plea good, then the above obligation to be void; otherwise, to remain in full force and virtue.

WELLS, FARGO & COMPANY, EXPRESS,
UNITED STATES FIDELITY & GUAR-
ANTY COMPANY, *Principals,*

By BAKER, BOTTS, PARKER & GARWOOD,
Their Attorneys of Record.

35½

JAS. A. BAKER, *Surety,*
G. A. TAFT,

Gen'l Sup't Wells Fargo, & Company, Express, Surety.

The above and foregoing bond approved this the 21 day of May, A. D. 1913, same to operate as a supersedeas.

W. W. SHARP,
Judge of the County Court of Madison County, Texas.

36

Writ of Error.

THE UNITED STATES OF AMERICA, ss:

The President of the United States to the Judge of the County Court of Madison County, in the State of Texas, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea, which is in said court before you between D. W. Ford, Plaintiff, and Wells Fargo & Company, Express, a corporation, and The United States Fidelity & Guaranty Company defendants, Number 284 on the docket of your said court, your Court being the highest court of said state having jurisdiction to render judgment in the case; there was drawn in question the validity of a statute of the United States and the decision was against its validity, and there was drawn in question the construction of a clause of the Constitution of the United States and the decision was against the right, title, privilege and exemption specially set up and claimed by defendant, Wells Fargo & Company, Express, under such clause, and there being manifest error in said decision, greatly to the damage of Wells Fargo & Company, Express, and The United States Fidelity & Guaranty Company the Petitioners in Error, and we being willing that if there is error, it be duly corrected, we therefore command you that if judgment be therein given, that under the seal of your court, you send the record and proceedings had in said cause to the Supreme Court of the United States together with this writ, so that you have the same at Washington, within thirty days from the date hereof, in the Supreme Court, to be then and there held, that the record may be inspected by said court and justice done.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court, the 22 day of May, in the Year of Our Lord, One Thousand, Nine Hundred and Thirteen.

[Seal United States District Court, Southern District of Texas.]

L. C. MASTERSON,
*Clerk of the District Court of the United States
for the Southern District of Texas,*
By — — —, *Deputy.*

Allowed on the defendants, Wells Fargo & Company, Express, and United States Fidelity & Guaranty Company, giving bond according to law in the sum of One Thousand Dollars.

[Seal County Court of Madison County, Texas.]

W. W. SHARP,
Judge of the County Court of Madison County, Texas.

[Endorsed:] No. 284. Wells Fargo & Company, Express, et al., Plaintiffs in Error, versus D. W. Ford, *Plaintiff* in Error. Writ of Error. Original. Issued May 22, 1913. L. C. Masterson, Clerk. 17. Copied. Filed May 23, 1913. T. E. Griffin, County Clerk Madison County, Texas.

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Citation in Error.

THE UNITED STATES OF AMERICA, ss:

To D. W. Ford, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's office of the County Court of Madison County, Texas, at Madisonville, wherein Wells Fargo & Company, Express, and United States Fidelity & Guaranty Company, are Plaintiffs in Error, and you are Defendant in Error, to show cause, if any there be, why the judgment rendered against said Plaintiffs in Error as in said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this the 21 day of May, in the Year of Our Lord, one thousand, Nine Hundred and thirteen.

W. W. SHARP,

Judge of the County Court of Madison County, Texas.

Attest with the seal of the District Court of the United States for the Southern District of Texas, this the 22 day of May, A. D., 1913.

[Seal United States District Court, Southern District of Texas.]

L. C. MASTERSON,

*Clerk of the District Court of the United States
for the Southern District of Texas,
By ———, Deputy.*

Due service of the above and foregoing citation is hereby acknowledged this the 22 day of May, A. D., 1913.

D. W. FORD,

By W. J. POOLE &

Q. J. FORD,

His Attorney of Record.

[Endorsed:] No. 284. Wells Fargo & Company, Express, et al., Plaintiffs in Error, versus D. W. Ford, Defendant in Error. Original Citation in Error. Issued May 22, 1913. L. C. Masterson, Clerk. 18. Filed May 23, 1913. T. E. Griffin, County Clerk Madison County, Texas.

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THE STATE OF TEXAS,

County of Madison:

I, T. E. Griffin, Clerk of the County Court in and for Madison County, Texas, do hereby certify that the foregoing is a full true and complete transcript of the record and proceedings in the cause of D. W. Ford, Plaintiff, versus Wells Fargo & Company, Express, et

al., defendants, Numbered 284 as the same now appear on file in my office and from the records thereof; that a true and correct copy of the assignment of errors attached to said transcript is now on file in my office; that the original writ of error bond, a true copy of which is attached to the transcript is now on file in my office, and that the original petition for writ of error from the Supreme Court of the United States to the County Court of Madison County, Texas, the original Writ of Error and the Original Citation in Error are hereto attached together with the bills of costs.

In testimony whereof, witness my hand and the seal of said court at Madisonville on this the 6 day of June, A. D. 1913.

[Seal County Court of Madison County, Texas.]

T. E. GRIFFIN,
Clerk County Court, Madison County, Texas.

39 Baker, Botts, Parker & Garwood, Attorney- for Appellant,
Houston, Texas, P. O. Address.
Poole and Ford, Attorney- for Appellee, Madisonville, Texas,
P. O. Address.

[Endorsed:] No. 284. Wells Fargo & Co., Express, Appellant, Plaintiffs in Error, vs. D. W. Ford, Appellee, Defendant in Error. From the County Court of Madison County, Texas. Applied for by Baker, Botts, Parker & Garwood, Attorneys for Appellant on the 25th day of April 1913, and delivered to Baker, Botts, Parker & Garwood on the 7th day of June 1913. T. E. Griffin, Clerk County Court Madison County. Filed in Court of Criminal Appeals, at — Texas, the — day of —, 19—. — —, Clerk Court of Criminal Appeals. By — —.

Endorsed on cover: File No. 23,851. Texas, Madison County, County Court. Term No. 700. Wells Fargo & Company, Express, and The United States Fidelity & Guaranty Company, plaintiffs in error, vs. D. W. Ford. Filed September 13th, 1913. File No. 23,851.

In the
Supreme Court of the United States
October Term, 1913.

No.

WELLS FARGO & COMPANY EXPRESS, ET AL.,
Plaintiffs in Error,

VS.

D. W. FORD, *Defendant in Error.*

Error to the County Court of Madison County, Texas.

Motion to Amend Writ of Error

To the Honorable, The Supreme Court of the United States:

Come now the plaintiffs in error in the above styled and numbered cause, Wells Fargo & Company Express, and United States Fidelity & Guaranty Company, and

move this Honorable Court to amend the writ of error in this cause by inserting therein the United States Fidelity & Guaranty Company as a party plaintiff in error, and as reason therefor, your petitioners would show:

I.

This cause originated in the Justice Court of Madison County, Texas, and after being tried in that court was appealed to the County Court of the County and State aforesaid, and upon such appeal the said United States Fidelity & Guaranty Company was the surety on the appeal bond.

II.

That after the trial of the cause in the said County Court of Madison County, Texas, that being the highest court of said State in which a decision could be had in the cause, it was brought to this Honorable Court on the writ of error issued from this court to the County Court of Madison County, Texas.

III.

That in the petition for writ of error, the bond, the citation in error, and throughout the record of the proceedings in this cause, the United States Fidelity & Guaranty Company was named as a party in the cause, but by accident was omitted from the writ of error.

That the record in this cause discloses the facts sufficient to authorize this amendment, and the allowance of same will not injure the defendant in error,

Wherefore, your petitioners pray that the said writ
be amended in the manner named.

Respectfully submitted,

Baker, Batts, Parke + Garwood

A. M. Garwood,

Of Counsel for Plaintiffs in Error.

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No. 259

Case No.

Office Supreme Court, U. S.

FILED

MAY 6 1915

JAMES O. MAHER

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

IN OCTOBER TERM, 1914

WELLS FARGO & COMPANY, EXPRESS,
and the UNITED STATES FIDELITY
& GUARANTY COMPANY,

Plaintiffs in Error,

vs.

D. W. FORD,

Defendant in Error,

In Error To the County Court of Madison County, State of Texas

BRIEF FOR PLAINTIFFS IN ERROR

By

C. W. STOCKTON,

H. M. GARWOOD,

Attorneys for Plaintiffs in Error.

BAKER, BOWTS, PARKER & GARWOOD,

Of Counsel.

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IN THE
Supreme Court of the United States
IN OCTOBER TERM, 1914

WELLS FARGO & COMPANY, EXPRESS, and the UNITED STATES FIDELITY & GUARANTY COMPANY, <i>Plaintiffs in Error,</i>	}	No. 700
vs.		
D. W. FORD, <i>Defendant in Error.</i>		

In Error To the County Court of Madison County, State of Texas

BRIEF FOR PLAINTIFFS IN ERROR

Statement.

This suit originated in the Justice Court of Precinct No. 1, of Madison County, in the State of Texas. The account upon which the suit is based was filed on October 10, 1912, it being by the plaintiff, D. W. Ford, against Wells Fargo & Company, Express, a corporation, to recover thirty-five (\$35.00) dollars, no further information being given in said account. The citation, however, which was issued and served on said day showed that the suit was to recover thirty-five (\$35.00) dollars damages for the alleged failure of Wells Fargo & Company, Express, to pay to the plaintiff the sum of thirty-five (\$35.00) dol-

lars which it had agreed to collect from Walker Edmund Co., of Chicago, Ill., upon delivery of certain goods delivered by plaintiff to the defendant for transportation to Chicago, and delivery upon payment of said sum of thirty-five (\$35.00) dollars, the shipment having been made on October 9th, 1912. The defendant, in the time limited by law, filed an answer, in which, among other things, it alleged that the goods referred to being duly transported to destination, were taken from its hands under a writ of replevin, of which the plaintiff, the shipper, was given due notice, but that said plaintiff failed and refused to make defense. (Record, pp. 1-3.)

The case was tried in the Justice Court on January 27th, 1913, resulting in a judgment in favor of the plaintiff for the amount sued for, with interest and costs. (Rec., p. 4.)

The defendant, in due time, perfected its appeal to the County Court of Madison County, in which the case was tried *de novo*, the defendant setting up in due form the seizure of the goods under writ of replevin issued in a suit pending in the Municipal Court for the First District of the City of Chicago, in the County of Cook, State of Illinois, numbered 287084, and entitled Walker Edmund Co. v. D. W. Ford and Wells Fargo & Co., Express; notice from the defendant to the plaintiff of the seizure of the goods in said suit and the judgment rendered therein vesting and declaring the title to said goods in said Walker Edmund Co. (Rec., pp. 5-6.)

At the trial of the cause in said County Court on April 25th, 1913, there was a judgment in favor of plaintiff, and against the defendant, for the sum of thirty-five (\$35.00) dollars, with interest and costs, to which judgment, no motion for new trial being required under the

laws of Texas in effect at the time, exception was taken and the County Court being the court of last resort of the State of Texas in this case, notice of appeal to the Supreme Court of the United States was given. (Rec., p. 9.)

At said trial the evidence showed that on September 16th, 1912, the plaintiff shipped a diamond ring via Wells Fargo & Company, Express, to Walker Edmund Co., at Chicago, Ill., "with C. O. D. charges thereon amounting to \$35.00." The shipment was made from Madisonville, Texas, which was the plaintiff's residence. (Rec., p. 10.)

The package containing said ring arrived at its destination, Chicago, on September 20th, 1912, and on the same day was tendered the consignee, which refused to receive it, because Wells Fargo & Company refused to deliver it without payment of the \$35.00—this in accordance with the terms of its contract of shipment. On September 21st, 1912, Walkeer Edmund Co. instituted a suit in the Municipal Court for the First District of the City of Chicago, Ill., against Wells Fargo & Company, Express, and said Ford for the recovery of the ring, alleging that it was the property of Walker Edmund Co., and that Wells Fargo & Co., Express, wrongfully detained the same. In due course, writ of replevin issued, and on said September 21, 1912, was executed by Thos. M. Hunter, bailiff of the court of which the writ was issued, by his deputy, by seizing the ring. (Rec., pp. 11-17.)

On October 22nd, 1912, plaintiff in this suit, D. W. Ford, was given notice of the suit and of the seizure of the goods under writ of replevin, by a letter duly stamped, addressed to him at his residence, Madisonville, Texas, and on said date deposited in the United States mail. Prior to this, on September 29th, 1912, the attorney for

this plaintiff, he apparently having an attorney before the institution of the present suit, was given verbal notice of said suit and of the seizure of the shipment. (Rec., pp. 11 and 16.)

The agent of Wells Fargo & Company had no knowledge that plaintiff was elsewhere than at Madisonville, Texas, but the plaintiff testified that at the time the letter referred to was written and mailed he was not at Madisonville, and did not return there until November, 1912. He does not account for his failure to have his mail forwarded, nor say how or where he was to receive the \$35.00 "C. O. D.," nor is there anything to show what, if any, communication his attorney made to him with respect to the information he received from the agent. (Rec., pp. 10-11.)

The Federal question involved and relied upon was duly presented in the Justice Court and in the County Court, in which the written pleadings were supplemented, as is allowed by the laws of Texas, by oral pleadings, said question being that said courts denied faith and credit to the public acts, records and judicial proceedings of the State of Illinois in ignoring and in holding of no effect the writ, judgment and proceedings of the Municipal Court of the First District of the City of Chicago, Cook County, Illinois, which, as heretofore shown, was duly plead and duly proved.

Plaintiff in error filed the following assignments of error in this court:

Assignments of Error.

I.

The County Court erred in rendering judgment for the plaintiff, D. W. Ford, and against the defendant, Wells

Fargo & Company, Express, the plaintiff in error herein, because it appeared from the uncontroverted evidence that the property involved in the suit was taken from the possession of said Wells Fargo & Company, Express, by legal process of the State of Illinois, fair and valid on its face, of which due notice was given by said Wells Fargo & Company, Express, to said plaintiff.

II.

The County Court erred in holding insufficient the copy of the judgment and proceedings of the Municipal Court of the City of Chicago, County of Cook, State of Illinois, duly authenticated in compliance with the acts of Congress of the United States, because such holding was against the validity of an act of Congress of the United States, which is in truth in all things valid.

III.

The County Court erred in holding the judgment and proceedings aforesaid void as to plaintiff, D. W. Ford, because such holding denies full faith and credit to the public acts, records and judicial proceedings of the State of Illinois.

IV.

The County Court erred in holding that in order to avail itself of the seizure of the property involved herein under legal process of the State of Illinois, it was necessary that the defendant, Wells Fargo & Company, Express, plaintiff in error herein, have legal notice issued out of the court in which said proceedings were pending making the other claimant to said property a party thereto. (Record, p. 27.)

Argument.

I.

It is elementary that the seizure of goods in the possession of a carrier by virtue of a writ valid on its face, notice thereon being promptly given to the shipper or

owner of the goods, constitutes a complete defense in a suit by the shipper or owner for their alleged conversion.

The law is well stated, as follows:

“Where goods are taken out of the carrier’s possession under valid legal process, such as attachment or execution, or the carrier is obliged to and does deliver them to the lawful authorities of the place where the goods are, either in transit, or waiting delivery, or the carrier fails to transport and deliver them because of the lawful order of a court having jurisdiction of the subject-matter, the carrier is not liable for non-delivery, the process or order of the court being within the term *vis major*. But a carrier cannot relieve itself from responsibility for failure to deliver property consigned, by simply showing that it was taken from its custody under valid legal process; but must also show that it promptly gave notice of that fact to the owner. A seizure under legal process will excuse a common carrier from delivering to the owner goods intrusted to its care for shipment, although the owner was not the attachment defendant. * * * Goods in the custody of a carrier within the territorial jurisdiction of the court are subject to attachment, but the service of an attachment on a carrier creates no lien on property not within the territorial jurisdiction of the court issuing the writ at the time of the service, but which is in transit and beyond the limits of the court’s jurisdiction. There must be an actual seizure of the goods intended to be attached. The liability of the carrier ceases when the goods are taken from its custody by legal process, and it discharges its duty to the consignor and consignee by giving notice of the attachment, which gives them timely knowledge of the situation of the goods.” (Moore, on Carriers, Second Edition, Vol. I, pp. 327-331, and authorities there cited.)

II.

The Constitution of the United States declares that

"full faith and credit" shall be given in each State to the judicial proceedings of every other State, and that Congress may prescribe the manner in which such proceedings shall be proved and the effect thereof. Congress has accordingly provided that such judicial proceedings shall "have full faith and credit given to them in every other court of the United States as they have by law or usage in the court from which they are taken."

Here the property involved was within the jurisdiction of the Illinois court, was seized by virtue of a writ regular on its face, issued out of the Illinois court, and was found and declared by said court to be the property of Walker Edmund & Co., and there can be and is no question but that the process and judgment of the Illinois court was such as was recognized as regular and valid by the courts of Illinois, and it follows that it must be and should be recognized as valid and regular by the courts of Texas, the writ and proceedings being regular on their face under the law of both States.

This proposition requires no extended argument or numerous authorities to support it. It is sufficient to refer to the following decisions of this court:

- Green v. Van Buskirk, 7 Wall., 139.
- Fauntleroy v. Lum, 210 U. S., 230.
- Harris v. Balk, 198 U. S., 215.
- M'Elmoyle v. Cohen, 13 Peters, 312.
- Insurance Co. v. Harris, 97 U. S., 331.
- Simmons v. Saul, 138 U. S., 439.
- Carpenter v. Strange, 141 U. S., 87.

III.

The amount in controversy in this proceeding is very little, and may seem scarcely enough to warrant the suing out of writ of error from this court. The principle

involved is not novel, and at least should be familiar to the courts in which the case was tried. Nevertheless, it is conceivable that the recurrence of conditions similar to those which gave rise to this litigation makes it important and indeed necessary for the plaintiffs in error to have recourse to this court in order that they may not be arbitrarily deprived of their property.

It may frequently happen that a man is inveigled by specious advertisements to contract for the purchase of rings and other articles of personal adornment by mail, and on what is known as the installment plan, the vendor selling at a price sufficiently in excess of the real value of the articles sold to cover risk of default on the part of the purchaser and failure to return the goods, and the contract of sale providing that in case of default the payments made shall become the property of the vendor as rental for the use of the property, title to which shall thereupon revert in the vendor. The purchaser, after having made some payments, becomes aware that the price at which the goods were sold is in excess of their cash value, and being dissatisfied on this or some other account, defaults in his payments and demands the rescission of the contract and the return of the money paid upon redelivery of the articles sold.

The vendor suggests by letter to the purchaser that the latter return the jewel with instructions to the express company to deliver it upon payment of the sum which the purchaser has theretofore paid. This letter contains no promise that the money will be refunded or turned over to the express company, but the purchaser assumes that this will be done. He complies with what is apparently a very reasonable request, but upon arrival of the shipment at destination, is much surprised and ag-

grieved to find that the vendor pays nothing, but relies on the terms of its contract, and seizes the goods under legal process—his sole gain being a certain amount of knowledge of the ways of the world, which he, on his part, considers somewhat dearly bought.

Under these conditions he turns to the local Justice of the Peace, and to recoup himself, seeks compensation from the carrier, the only innocent party in the transaction, when, if he has a remedy, it should be obtained from the vendor.

Such conditions as these make necessary such proceedings as this.

Respectfully submitted, and with prayer that the judgment be reversed and the cause remanded to the County Court of Madison County in the State of Texas, with instructions to enter judgment for the plaintiffs in error.

C. W. STOCKTON,

H. M. GARWOOD,

Attorneys for Plaintiffs in Error.

BAKER, BOTTS, PARKER & GARWOOD,

Of Counsel.

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Argument for Plaintiff in Error.

WELLS FARGO & COMPANY EXPRESS v. FORD.

ERROR TO THE COUNTY COURT OF MADISON COUNTY, STATE
OF TEXAS.

No. 259. Submitted May 5, 1915.—Decided June 21, 1915.

The carrier cannot be held responsible for goods taken from its custody by valid legal process provided it gives the owner prompt notice of the suit so that he may have an opportunity to protect his interest. As the carrier is not bound to make any defense it is all the more bound to give the consignor notice so that he may appear and make his own defense.

Where the carrier gives notice of suit and the owner fails to appear or fails in his defense, and the seizure and sale of the property under judicial process amounts to *vis major*, the carrier cannot be held responsible for yielding thereto.

Where, as in this case, the carrier failed to give reasonable notice to the owner, it cannot plead the judgment obtained against it taking the owner's goods; and in such a case, if the judgment was rendered in another State, the refusal of the court to admit it on the common-law ground that notice was not given to the owner does not amount to a denial of full faith and credit under the Federal Constitution.

THE facts, which involve the liability of carriers for goods taken from them by legal process and also the construction and application of the full faith and credit clause of the Federal Constitution, are stated in the opinion.

Mr. H. M. Garwood and *Mr. C. W. Stockton* for plaintiff in error:

The defense in the court below was good.

Full faith and credit to the judicial proceedings of the court of the State of Illinois was denied. See *Moore on Carriers* (2d ed.), 327-331; *Carpenter v. Strange*, 141 U. S. 87; *Fauntleroy v. Lum*, 210 U. S. 230; *Green v. Van Buskirk*, 7 Wall. 139; *Harris v. Balk*, 198 U. S. 215; *Insur-*

ance Co. v. Harris, 97 U. S. 331; *M'Elmoyle v. Cohen*, 13 Pet. 312; *Simmons v. Saul*, 138 U. S. 439.

No appearance for defendant in error.

MR. JUSTICE LAMAR delivered the opinion of the court.

D. W. Ford was a traveling salesman who was much of the time on the road, but considered Madisonville, Texas, as his home. On September 16, 1912, he shipped from that place to the Walker-Edmond Company, at Chicago, a package containing a ring with "C. O. D. charges thereon amounting to \$35." When the package arrived in Chicago it was tendered to the consignee who refused to receive it or to pay the \$35. The Walker-Edmond Company, in order to obtain possession of the ring, forthwith brought an action in replevin against Ford and the Express Company in the Municipal Court of Chicago. The writ, returnable October 4, was only served on the Express Company—the officer making return that Ford was not to be found. The Chicago agent of the Express Company on September 21 wrote the agent at Madisonville to notify Ford of the pendency of the suit to be tried on October 4. There is a claim that the agent at once wrote the Chicago office that Ford did not desire to employ counsel and would hold the Company responsible under its C. O. D. contract. The record shows that the local agent, on October 2, mailed a letter to Ford at Madisonville containing a notice that judgment would go by default unless Ford defended by October 4.

Ford claimed that he was absent from Madisonville during the months of September and October and received no notice of the pendency of the suit until after his return in November—and after the Municipal Court of Chicago had entered a default judgment, finding that Walker-Edmond Company was entitled to the possession of the ring.

Subsequently Ford demanded that the Express Com-

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Opinion of the Court.

pany should return him the property or else pay him \$35, which it had been instructed to "Collect on Delivery." On its failure to comply Ford brought suit in a Texas court against the Express Company which defended on the ground that it was not liable because the package had been taken from it by judicial process. In support of that defense it offered a copy of the Illinois record in the case of *Walker-Edmond Co. v. Wells, Fargo & Co. Express and D. W. Ford*. The judge of the County Court found that Ford had not been served in any way provided by law and "on account of the Express Company's negligence in failing to give the plaintiff legal notice of the pendency of the suit in Chicago it is liable on account of its negligence." Judgment was thereupon entered for Ford by the County Court of Madison County, Texas,—the highest court of that State having jurisdiction of the case—and the Express Company brought the case here by writ of error in which it complains of the failure of the Texas court to give full faith and credit to the judicial proceedings of the Municipal Court exercising jurisdiction under the laws of the State of Illinois.

In the brief it is said that, while the case is for a small sum, the writ of error is prosecuted to test the constantly recurring and, to it, important question as to whether the Express Company can be held liable to consignors who sue in one State to recover property which has been taken from the carrier by the judicial processes of another State. But the law is well settled. The carrier cannot be held for goods taken from its custody by valid legal process, provided it gives the owner prompt notice of the suit so that he may have an opportunity to protect his interest. For, as the land carrier is not bound (*The M. M. Chase*, 37 Fed. Rep. 708) to make a defense, it is all the more bound to give the consignor notice of the suit so that he may appear and make his own defense. *Ohio & M. R. R. v. Yohe*, 51 Indiana, 181; *Merz v. Chicago &c. Ry.*, 86

Minnesota, 35; *Bliven v. Hudson &c. R. R. Co.*, 36 N. Y. 403, 407. If the carrier gives such notice and the consignor fails to appear, or fails in his defense, and the property is seized, held, or sold under judicial process, the carrier cannot thereafter be held responsible for yielding to what must then be treated as *vis major*.

In the present case the carrier, in recognition of its duty to give notice, instructed the agent at Madisonville to notify Ford of the pendency of the suit. The local agent, without making inquiries to learn whether Ford was in town or absent, in the course of his business as a traveling salesman, contented himself with mailing a letter directed to Ford at Madisonville. This letter was posted only two days before the trial in Chicago and was not received by Ford until after his return to Madisonville, and after the judgment in the replevin suit had been entered against the Express Company. The Texas court held that the carrier was liable for the value of the consigned goods because it had been guilty of negligence in failing to give Ford legal notice.

That judgment, based on that common-law ground, did not deny full faith and credit to the Illinois judgment which was treated as valid between Walker-Edmond Co. and the Express Company. It, however, was not available to the Express Company because it established only one of the two elements which the carrier had to prove in order to make out its defense when sued by Ford for the property. For the carrier not only had to show that the package had been taken from it by a valid judicial process, but it also had to show that Ford had been given prompt notice of the pendency of the suit in which that process issued. The decision against the Express Company was based on its failure to prove that it gave the notice which was the condition precedent of its right to use the valid Illinois judgment.

Affirmed.